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In particular, Brilliant Energy urges the Commission to immediately grant Brilliant Energy waiver of Section 9.6(2) of the ERCOT Nodal Protocols to allow Brilliant Energy to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Nodal Protocols to dispute the invoiced payment amounts. Additionally, Brilliant Energy requests that the Commission grant this waiver to require those of Brilliant Energy's invoiced amounts that Brilliant Energy has already paid to be refunded or, alternatively, placed into escrow while the disputes are resolved. For settlement invoices Brilliant Energy has received but remain unpaid, settlement invoices not yet received by Brilliant Energy, and potential resettlement invoices that Brilliant Energy anticipates receiving, Brilliant Energy is requesting this waiver in order to be excused from the requirement for immediate payment, or, in the alternative, to have the invoiced funds placed into escrow, in each case until Brilliant Energy exhausts all billing dispute rights under the ERCOT protocols.

Although Brilliant Energy files this Petition only on its own behalf, it must be realized that the severe and potentially irrecoverable losses that Brilliant Energy may suffer due to market design and operation decisions will be experienced market-wide by many if not most participants in the ERCOT electricity market. The artificial administrative escalation of power and ancillary prices during the February 14-20 winter storm event in ERCOT has created an unnecessary financial crisis for load-serving entities and their customers. The Commission **must** take action immediately or the competitive market will collapse. Fixing these errors over time will not be sufficient to prevent irreparable harm to Brilliant Energy and many other market participants in the near term.

I. BACKGROUND

Brilliant Energy operates in the ERCOT market as a certified retail electric provider (“REP”) and a load serving entity (“LSE”).

On February 21, 2021, the Commission issued an “Order Directing ERCOT to Take Action and Granting Exception to ERCOT Protocols” (hereafter simply “Order”) which explained:

In an attempt to protect the overall integrity of the financial electric market in the ERCOT region, the Commission concludes it is necessary to authorize ERCOT to use its sole discretion in taking actions under the ERCOT Nodal Protocols to resolve financial obligations between a market participant and ERCOT. It is appropriate that ERCOT's discretion include, but not be limited to, ERCOT's ability to take the following actions:

- Deviate from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments;
- Utilize available funds, such as undistributed congestion revenue right auction revenues, to cover short-paying invoice recipients;
- Relax credit requirements and releasing cash or other collateral to provide short term market-participant liquidity;
- Deviate from protocol requirements regarding the maximum amount of default uplift invoices;
- Suspend breach notifications to certain market participants for failure to make payment or provide financial security; and
- Produce reconciliation settlements following market stabilization.

In Response to the Order, ERCOT issued this notice on February 22, 2021:

ERCOT is temporarily deviating from Protocol deadlines and timing related to settlements, collateral obligations, and Invoice payments while prices are under review. Invoices or settlements will not be executed until issues are finalized by State leaders considering solutions to the financial challenges caused by the winter event, which is anticipated to occur this week.

One day later ERCOT issued a second notice which stated that “ERCOT has ended its temporary deviation from protocol deadlines and timing related to settlements, collateral obligations, and invoice payments. Invoices and settlement will be executed in accordance with Protocol language.”

that the DAM Charges and RTM Charges attributable to Ancillary Services reflect grossly disproportionate prices. These prices do not adhere to the Legal Market Notice and contradict the information posted by ERCOT on its website.

Brilliant Energy believes that the Ancillary Services charges, typically related to providing a reliable (and operating) energy grid, reflect an algorithm that at least prima facie no longer functioned in a reasonable and rational manner during the February 2021 Winter Weather Event. For example, in its training materials ERCOT describes its Responsive Reserve Service (“RRS”) as being “used under normal operations to recover from significant frequency deviations.” In other words, RRS is intended to ensure generation is online and available to ramp up in the case of a sudden drop in frequency. During the February 2021 Winter Weather Event, however, system frequency was actually managed by load shedding, which ERCOT confirmed during a meeting open to the public held on Wednesday, February 24, 2021. In this circumstance, market participants should not be charged for any RRS generation resources, as all available generation should have been dispatched to minimize the number of residents without power rather than being held in reserve. The same logic applies to Non-Spin Reserve (“NSR”) charges. In the extreme circumstances of the Winter Weather Event, all available generation should have been online, with system disturbances managed through load shedding. Consequently, market participants should not have incurred NSR charges during the period in question.

Brilliant Energy anticipates disputing these charges. ERCOT’s dispute resolution procedures, set forth in Section 9.14 of its Nodal Protocols, generally require disputes to be initiated within ten (10) business days after an invoice is posted by ERCOT, and ERCOT may request additional information regarding the dispute within seven (7) business days. Once a dispute is initiated, ERCOT will attempt to resolve a dispute within fifteen (15) days unless more time is

requested because of the complex nature of a dispute. If a dispute is not resolved through the dispute resolutions procedures set forth in Section 9.14 of the ECROT Nodal Protocols, the party raising the dispute may proceed to the Alternative Dispute Resolution Procedures outlined in Section 20 of the ERCOT Nodal Protocols.

The actions taken above negatively impacted the market, including suppliers like Brilliant Energy. Furthermore, ERCOT's processes do not provide any opportunity for market participants or policymakers to consider action to preserve the Texas competitive electricity market, nor does it provide sufficient opportunity for suppliers to adequately address their concerns about settlement invoices issued for the February 14-19, 2021 time period.

The requirement to pay the invoices immediately while disputing the charges through a comparatively lengthy process is potentially ruinous. During a meeting open to the public held on Wednesday, February 24, 2021, senior ERCOT executives were asked if they expected to have sufficient liquidity through Friday, February 26, 2021. In response, ERCOT admitted that it does not have a solid answer and would have to wait and see how much money comes in. On Friday, February 26, 2021, ERCOT issued a notice to the market indicating that it was at least two billion dollars short for invoices owed. It is likely that this is only a small portion of ERCOT's eventual total deficit.

II. REQUEST FOR WAIVER

Brilliant Energy recognizes and appreciates the efforts by the Commission, ERCOT, and market participants during this weather emergency. This requested waiver is necessary to avoid Brilliant Energy having to make unreasonable and exorbitant payments immediately to ERCOT despite the continuing uncertainty surrounding the proper amounts of those payments and the requirements generally of Brilliant Energy to make those payments, when, by its own admission,

ERCOT may not have sufficient liquidity to return any successfully disputed amounts. In light of ERCOT's tenuous financial circumstances, and Brilliant Energy's belief that these DAM charges and RTM charges attributable to Ancillary Services, charges attributable to the ORDC, and energy prices attributable to the premature administrative implementation of market cap scarcity pricing, are grossly inaccurate, Brilliant Energy will be unfairly prejudiced if forced to make payment of the disputed amounts. The impacts to Brilliant Energy and in some cases, potentially to end-use retail customers of Brilliant Energy, if Brilliant Energy is forced to continue to make these payments immediately will be devastating and cause irreparable harm to Brilliant Energy retail consumers in Texas, and other ERCOT market participants long after the immediate weather event has passed.

Section 9.6(2) of the ERCOT Nodal Protocols requires "[e]ach Invoice Recipient shall pay any net debit and be entitled to receive any net credit shown on the Settlement Invoice on the payment due date, whether or not there is any Settlement and billing dispute regarding the amount of the debit or credit." Brilliant Energy anticipates disputing settlement invoices it has already received and paid, settlement invoices it has received but remain unpaid, settlement invoices not yet received, and potential resettlement invoices that Brilliant Energy anticipates receiving. However, according to the language of the ERCOT Nodal Protocols, Brilliant Energy is required to pay ERCOT these disputed amounts immediately while the disputes are pending, and, as noted above, it could take more than a month for these disputes to be resolved. Brilliant Energy asserts that, given the extreme emergency conditions faced by all market participants as a result of the extreme weather events, and the potential harm to Brilliant Energy and its customers if required to immediately pay these disputed amounts to ERCOT, waiver of this requirement to pay the ERCOT Settlement Invoice amounts while amounts are in dispute is appropriate, particularly in light of ERCOT's own statement that it is uncertain if it has sufficient liquidity to last through Friday.

The Commission has broad powers, especially during an emergency, and the Commission continues to exercise this authority in issuing orders related to the February Winter Weather Event. Additionally, PURA § 39.151(d) gives the Commission complete authority over ERCOT, the independent organization certified by the Commission under PURA § 39.151. Therefore, granting this waiver is within the jurisdiction of the Commission.

The Commission has broadly granted waiver of the ERCOT Nodal Protocols to the extent necessary to comply with the Commission's directives, and Brilliant Energy is requesting this waiver to the extent it is not covered by the Commission's current waiver of the ERCOT Nodal Protocols. However, ERCOT has issued a series of inconsistent market notices which have effectively negated the relief the Commission has attempted to provide. The Commission clearly has authority to directly grant this waiver, and the Commission has granted waiver of ERCOT Nodal Protocols in other instances where there is good cause to do so. Good cause exists here to grant Brilliant Energy's requested waiver.

Brilliant Energy's requested waiver is limited in scope and addresses an immediate, concrete problem related to emergency circumstances. Brilliant Energy is not requesting that the Commission make a determination as to whether Brilliant Energy should be relieved of its payment obligations. Brilliant Energy intends to address its disputes with ERCOT, including its claims with respect to payment obligations, through the dispute resolution procedures set out in the ERCOT Nodal Protocols. Brilliant Energy is requesting that the Commission waive the requirements of Section 9.6(2) such that its payment obligations may be delayed until the dispute with ERCOT is resolved.

Alternatively, Brilliant Energy requests waiver of Section 9.6(2) and require payments to be placed into escrow until the dispute with ERCOT is resolved with respect to invoices Brilliant

Energy has received but not yet paid, settlement invoices not yet received, and potential resettlement invoices that Brilliant Energy anticipates receiving. With respect to invoices Brilliant Energy already has paid, Brilliant Energy requests that the amounts paid be refunded by ERCOT, or, alternatively that the refunded amounts be placed into escrow until the dispute with ERCOT is resolved. This alternative approach would ensure that all payments are timely made pursuant to the ERCOT Nodal Protocols, but would also ensure that once Brilliant Energy's disputes with ERCOT are resolved, Brilliant Energy can be made whole in the event that the amounts due to ERCOT are less than previously invoiced.

III. REQUEST FOR RELIEF

The Commission's Order noted that PURA §39.151(d) gives the Commission complete authority over ERCOT and the Commission should exercise that authority in these extraordinary circumstances to take all necessary action to preserve the competitive electricity market during this emergency. Additionally, 16 TEX. ADMIN CODE § 25.501(a) provides that ERCOT determines market clearing prices of energy and other ancillary services in the ERCOT market unless otherwise directed by the Commission. PURA § 39.151(d-4) also provides that the Commission may “resolve disputes between an affected person and an independent organization and adopt procedures for the efficient resolution of such disputes.”

Therefore, based on the Commission's authority under Texas law, Brilliant Energy requests that the Commission grant a temporary waiver of section 9.6(2) of ERCOT protocols to give Brilliant Energy the additional opportunity to resolve its settlement dispute in accordance with ERCOT's dispute resolution protocol without inflicting undue financial harm upon Brilliant Energy.

III. CONCLUSION

WHEREFORE, PREMISES CONSIDERED, Brilliant Energy urges the Commission to immediately grant Brilliant Energy waiver of Section 9.6(2) of the ERCOT Nodal Protocols (1) to allow Brilliant Energy to delay payment of certain ERCOT Settlement Invoices while it fully exercises its rights under the ERCOT Nodal Protocols to dispute the invoiced payment amounts and (2) to refund to Brilliant Energy amounts Brilliant Energy has already paid in connection with disputed invoices pending resolution of such disputes. Alternatively, Brilliant Energy requests that the Commission grant this waiver to require that payments by Brilliant Energy placed into escrow while the disputes are resolved, and that disputed amounts Brilliant Energy has already paid be placed into escrow by ERCOT. It is imperative that these steps be taken to avoid, or at least help mitigate, the potential financial impact to Brilliant Energy and its customers.

Respectfully submitted,

By: /s/ Andres Medrano
Andres Medrano
Ph: 512.542.7013
Fax: 512.542.7100
amedrano2@foley.com

FOLEY & LARDNER LLP
600 Congress Avenue, Suite 3000
Austin, TX 78701

COUNSEL FOR BRILLIANT ENERGY,
LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served on all parties by email on the 2nd day of March 2021.

/s/ Andres Medrano

Andres Medrano